BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
MFS Petition Regarding Unbundling of Local Exchange Carrier Common Line Facilities	)	RM - 8614

REPLY OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

PAUL RODGERS
General Counsel

CHARLES D. GRAY
Assistant General Counsel

JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

April 25, 1995

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	
MFS Petition Regarding Unbundling of Local Exchange Carrier Common Line Facilities	**RM - 8614**

REPLY OF THE
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS

Pursuant to Sections 1.4 and 1.405 of the Federal Communication Commission's ("FCC" or "Commission") General Rules of Practice and Procedure, 47 C.F.R. Sections 1.4 and 1.405 (1994), the National Association of Regulatory Utility Commissioners ("NARUC") respectfully files this Reply to comments filed by AT&T and others in support of the "Petition for Rulemaking" filed by MFS Communications Company, Inc. ("MFS") on March 7, 1995, and noticed by the FCC in its March 10, 1995 Report No. 2061. In support of its reply, NARUC states as follows:

I. DISCUSSION

MFS asks the FCC to require LECs to unbundle the local loop, adopt uniform technical standards for interconnection to the unbundled loop facilities, and set "nonbinding guidelines" for pricing of unbundled local loop facilities. MFS Petition at i-iv, 1, 27-33. NARUC states in its opposition comments that the FCC lacks authority to require local unbundling or mandate uniform technical standards, or pricing guidelines, for such unbundling.

Nothing filed by any of the twenty-three parties to this proceeding suggests otherwise. NARUC respectfully suggests it is not mere coincidence that, except for AT&T, none of those filing supporting comments directly addressed what is, simultaneously, the most obvious flaw in the MFS request, and the basic barrier to FCC action in this proceeding, i.e. -

THE FCC DOES NOT HAVE THE JURISDICTION NECESSARY TO GRANT MFS' REQUEST TO UNBUNDLE THE LOCAL LOOP.

Almost all the Local Exchange Carriers that filed joined the New York State Department of Public Service Commission, the Maryland Public Service Commission, the Pennsylvania Public Utility Commission and NARUC in asserting the obvious limits placed upon the FCC by the Communications Act with regard to local service. See, e.g., Ameritech comments at 4-5, Bell Atlantic Comments at 2-5, BellSouth Comment at 15-16, NYNEX Comments at 8-10, Southwestern Bell Comments at 2-4, Pennsylvania PUC Comments at 4-5, and New York DPSC Comments at 4-5. The remainder of those filing, which generally support or build upon the MFS proposal, either blithely ignore the obvious FCC jurisdictional deficit,[1] or, make conclusory statements without supporting legal analysis.[2]

---

[1] See, e.g., generally the Comments filed by Allnet and Teleport which never discuss, and thus implicitly assume, the FCC's jurisdiction to grant and/or modify the requested relief.

[2] See, e.g., MCI's Comments at 2, assuming FCC jurisdiction while decrying potentially unnecessary preemption of State regulations. Cf. LDDS's Comments at 2, where it agrees with MFS that the "federal government can...assume a leadership role in promoting...local competition.." while conceding that under the Communications Act "...state...commissions will be responsible for much of the work that must be done.."

Of those filing in support of the MFS request, only AT&T, at 12-16 of its comments, makes any effort to address the jurisdiction issue. It is not surprising that AT&T basically restates the flawed argument presented by MFS in its petition.

Ignoring the teachings of the Supreme Court in Louisiana v. FCC, 476 U.S. 355 (1986), AT&T, like MFS, cites 47 U.S.C. Section 151, and suggests that, as the "testing and promotion of competition throughout the local exchange has implications for the availability of 'a rapid, efficient, Nation-wide, and world wide' telecommunications infrastructure..", the FCC has plenary authority over the local issues raised by the MFS petition. Id. at 13.

In Louisiana, the FCC made the same argument, suggesting, based on § 151, that "federal displacement of State regulation is justifiable under the Act when necessary 'to avoid frustration of validly adopted federal policies'." Id. 476 U.S. at 362. In describing the boundaries of § 152(b), the court rejected that arguments, even in the face of evidence that, in so doing, they would be threatening "..the financial ability of the industry to achieve the technological progress and provide the quality of service that the Act was passed to promote." Id. 476 U.S. at 358.

Thus, the opinion makes clear that the FCC can not legitimately preempt State action which frustrates federal policy under § 151 to develop an "efficient, nationwide communications network," even if such action supposedly "jeopardize[s] the continuing viability of the telecommunications industry." Id. 476 U.S. at 368 & 370.

AT&T also adopts MFS suggestion that Section 151, in conjunction with the alleged "inseverability" of local plant used to complete inter- and interstate calls, allows the FCC to preempt in this area. As Bell Atlantic notes in its comments, the local loop "...is the quintessential area of local regulation. The Separations process recognizes and accounts for the use of local loop in the competition of interstate calls. Such use, however, does not change the fundamentally local nature of the local loop. Courts, the Commission, and even advocates of local loop unbundling have recognized that interstate interconnection to the local loop does not give the Commission the right to exercise jurisdiction over this intrastate service and facility." Bell Atlantic Comments at 3-4 {footnotes omitted}.

Again, as we asserted in our original opposition, to adopt the approach suggested by AT&T writes Section 152(b) out of the Communications Act and elevates the FCC to a court of review of all State regulation of intrastate service.

CONCLUSION

For the foregoing reasons, NARUC files this reply, and requests that the FCC reject MFS's requests for proceedings to mandate local loop unbundling and interconnection standards and enter a dialogue with NARUC on the most effective way to shape a Federal/State pro-competitive initiative.

Respectfully submitted,

PAUL RODGERS
General Counsel

CHARLES D. GRAY
Assistant General Counsel

JAMES BRADFORD RAMSAY
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

1102 ICC Building
Post Office Box 684
Washington, D.C. 20044

(202) 898-2200

April 25, 1995

CERTIFICATE OF SERVICE

I, JAMES BRADFORD RAMSAY, certify that a copy of the foregoing was served on all parties on the attached Service List.

James Bradford Ramsay
Deputy Assistant General Counsel

National Association of
Regulatory Utility Commissioners

April 10, 1995

Cindy Schonhaut 424-7645
Metropolitan Fiber System
Government Affairs Office
3000 K Street, NW, Suite 300
Washington, DC 20007

Kathleen Wallman
FCC
1919 M Street, NW
Washington, D.C. 20544

Kathy Levitz
FCC
1919 M Street, NW
Washington, D.C. 20544

James Schlicting
FCC
1919 M Street, NW
Washington, D.C. 20544

Richard J. Heitmann
LDDS Worldcom
515 East Amite
Jackson, MS 39201-2702

Linda L. Oliver
Hogan and Hartson
555 Thirteenth Street, NW
Washington, D.C. 20004

J. Mnnning Lee
Vice President, Regulatory Affairs
Two Teleport Drive, Suite 300
Staten Island, N.Y. 10311

Roy L. Morris
Regulatory Counsel
Allnet Communications Services, Inc.
1990 M Street, N.W. Suite 500
Washington, D.C. 20036

Robert M. Lynch
One Bell Center - Room 3520
St. Louis, Missouri 63101

Edward Shakin
1320 North Court House Road
Eighth Floor
Arlington, VA 22201

Jay C. Keithley
1850 M Street, N.W. 11th Floor
Washington, D.C. 20036

Mark C. Rosenblum
Room 3244J1
295 Maple Avenue
Basking Ridge, N.J. 07920